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HOUSE BILL 1254

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY W. SANDEL

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE GROSS RECEIPTS
AND COMPENSATING TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978,
Chapter 46, Section 1, as amended) is amended to read:

"7-9-3. DEFINITIONS. -- As used in the Gross Receipts and
Compensating Tax Act:

A. "department" means the taxation and revenue
department, the secretary of taxation and revenue or any
employee of the department exercising authority lawfully
delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of
property for consideration or any performance of service for
consideration;

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1 C. "construction" means building, altering,
2 repairing or demolishing in the ordinary course of business any:

3 (1) road, highway, bridge, parking area or
4 related project;

5 (2) building, stadium or other structure;

6 (3) airport, subway or similar facility;

7 (4) park, trail, athletic field, golf course or
8 similar facility;

9 (5) dam, reservoir, canal, ditch or similar
10 facility;

11 (6) sewerage or water treatment facility, power
12 generating plant, pump station, natural gas compressing station,
13 gas processing plant, coal gasification plant, refinery,
14 distillery or similar facility;

15 (7) sewerage, water, gas or other pipeline;

16 (8) transmission line;

17 (9) radio, television or other tower;

18 (10) water, oil or other storage tank;

19 (11) shaft, tunnel or other mining
20 appurtenance;

21 (12) microwave station or similar facility; or

22 (13) similar work;

23 "construction" also means:

24 (14) leveling or clearing land;

25 (15) excavating earth;

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1 (16) drilling wells of any type, including
2 seismograph shot holes or core drilling; or

3 (17) similar work;

4 D. "financial corporation" means any savings and
5 loan association or any incorporated savings and loan company,
6 trust company, mortgage banking company, consumer finance
7 company or other financial corporation;

8 E. "engaging in business" means carrying on or
9 causing to be carried on any activity with the purpose of direct
10 or indirect benefit;

11 F. "gross receipts" means the total amount of money
12 or the value of other consideration received from selling
13 property in New Mexico, from leasing property employed in New
14 Mexico, from selling services performed outside New Mexico the
15 product of which is initially used in New Mexico or from
16 performing services in New Mexico. In an exchange in which the
17 money or other consideration received does not represent the
18 value of the property or service exchanged, "gross receipts"
19 means the reasonable value of the property or service exchanged.

20 (1) "Gross receipts" includes:

21 (a) any receipts from sales of tangible
22 personal property handled on consignment;

23 (b) the total commissions or fees derived
24 from the business of buying, selling or promoting the purchase,
25 sale or leasing, as an agent or broker on a commission or fee

1 basis, of any property, service, stock, bond or security;

2 (c) amounts paid by members of any
3 cooperative association or similar organization for sales or
4 leases of personal property or performance of services by such
5 organization; and

6 (d) amounts received from transmitting
7 messages or conversations by persons providing telephone or
8 telegraph services.

9 (2) "Gross receipts" excludes:

10 (a) cash discounts allowed and taken;

11 (b) New Mexico gross receipts tax,
12 governmental gross receipts tax and leased vehicle gross
13 receipts tax payable on transactions for the reporting period;

14 (c) taxes imposed pursuant to the
15 provisions of any local option gross receipts tax that is
16 payable on transactions for the reporting period;

17 (d) any gross receipts or sales taxes
18 imposed by an Indian nation, tribe or pueblo provided that the
19 tax is approved, if approval is required by federal law or
20 regulation, by the secretary of the interior of the United
21 States and provided further that the gross receipts or sales tax
22 imposed by the Indian nation, tribe or pueblo provides a
23 reciprocal exclusion for gross receipts, sales or gross
24 receipts-based excise taxes imposed by the state or its
25 political subdivisions;

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1 (e) any type of time-price differential;
2 and

3 (f) amounts received solely on behalf of
4 another in a disclosed agency capacity.

5 (3) When the sale of property or service is
6 made under any type of charge, conditional or time-sales
7 contract or the leasing of property is made under a leasing
8 contract, the seller or lessor may elect to treat all receipts,
9 excluding any type of time-price differential, under such
10 contracts as gross receipts as and when the payments are
11 actually received. If the seller or lessor transfers his
12 interest in any such contract to a third person, the seller or
13 lessor shall pay the gross receipts tax upon the full sale or
14 leasing contract amount, excluding any type of time-price
15 differential;

16 G. "manufacturing" means combining or processing
17 components or materials to increase their value for sale in the
18 ordinary course of business, but does not include construction;

19 H. "person" means:

20 (1) any individual, estate, trust, receiver,
21 cooperative association, club, corporation, company, firm,
22 partnership, limited liability company, limited liability
23 partnership, joint venture, syndicate or other entity, including
24 any gas, water or electric utility owned or operated by a
25 county, municipality or other political subdivision of the

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1 state; or

2 (2) any national, federal, state, Indian or
3 other governmental unit or subdivision, or any agency,
4 department or instrumentality of any of the foregoing;

5 I. "property" means real property, tangible personal
6 property, licenses, franchises, patents, trademarks and
7 copyrights. Tangible personal property includes electricity and
8 manufactured homes;

9 J. "leasing" means any arrangement whereby, for a
10 consideration, property is employed for or by any person other
11 than the owner of the property, except that the granting of a
12 license to use property is the sale of a license and not a
13 lease;

14 K. "service" means all activities engaged in for
15 other persons for a consideration, which activities involve
16 predominantly the performance of a service as distinguished from
17 selling or leasing property. "Service" includes activities
18 performed by a person for its members or shareholders. In
19 determining what is a service, the intended use, principal
20 objective or ultimate objective of the contracting parties shall
21 not be controlling. "Service" includes construction activities
22 and all tangible personal property that will become an
23 ingredient or component part of a construction project. Such
24 tangible personal property retains its character as tangible
25 personal property until it is installed as an ingredient or

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1 component part of a construction project in New Mexico.
2 However, sales of tangible personal property that will become an
3 ingredient or component part of a construction project to
4 persons engaged in the construction business are sales of
5 tangible personal property;

6 L. "use" or "using" includes use, consumption or
7 storage other than storage for subsequent sale in the ordinary
8 course of business or for use solely outside this state;

9 M "secretary" means the secretary of taxation and
10 revenue or the secretary's delegate;

11 N. "manufactured home" means a moveable or portable
12 housing structure for human occupancy that exceeds either a
13 width of eight feet or a length of forty feet constructed to be
14 towed on its own chassis and designed to be installed with or
15 without a permanent foundation;

16 O. "initial use" or "initially used" means the first
17 employment for the intended purpose and does not include the
18 following activities:

19 (1) observation of tests conducted by the
20 performer of services;

21 (2) participation in progress reviews,
22 briefings, consultations and conferences conducted by the
23 performer of services;

24 (3) review of preliminary drafts, drawings and
25 other materials prepared by the performer of the services;

1 (4) inspection of preliminary prototypes
2 developed by the performer of services; or

3 (5) similar activities;

4 P. "research and development services" means any
5 activity engaged in for other persons for consideration, for one
6 or more of the following purposes:

7 (1) advancing basic knowledge in a recognized
8 field of natural science;

9 (2) advancing technology in a field of
10 technical endeavor;

11 (3) the development of a new or improved
12 product, process or system with new or improved function,
13 performance, reliability or quality, whether or not the new or
14 improved product, process or system is offered for sale, lease
15 or other transfer;

16 (4) the development of new uses or applications
17 for an existing product, process or system, whether or not the
18 new use or application is offered as the rationale for purchase,
19 lease or other transfer of the product, process or system;

20 (5) analytical or survey activities
21 incorporating technology review, application, trade-off study,
22 modeling, simulation, conceptual design or similar activities,
23 whether or not offered for sale, lease or other transfer; or

24 (6) the design and development of prototypes or
25 the integration of systems incorporating advances, developments

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1 or improvements included in Paragraphs (1) through (5) of this
2 subsection; ~~[and]~~

3 Q. "local option gross receipts tax" means a tax
4 authorized to be imposed by a county or municipality upon the
5 taxpayer's gross receipts and required to be collected by the
6 department at the same time and in the same manner as the gross
7 receipts tax; "local option gross receipts tax" includes the
8 taxes imposed pursuant to the Municipal Local Option Gross
9 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
10 Act, ~~[Special Municipal Gross Receipts Tax Act]~~ County Local
11 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts
12 Tax Act, County Correctional Facility Gross Receipts Tax Act and
13 such other acts as may be enacted authorizing counties or
14 municipalities to impose taxes on gross receipts, which taxes
15 are to be collected by the department; and

16 R. "Internal Revenue Code" means the federal
17 Internal Revenue Code of 1986, as amended."

18 Section 2. Section 7-9-13.2 NMSA 1978 (being Laws 1992,
19 Chapter 100, Section 3, as amended) is amended to read:

20 "7-9-13.2. EXEMPTION--GOVERNMENTAL GROSS RECEIPTS TAX--
21 RECEIPTS SUBJECT TO CERTAIN OTHER TAXES.--Exempted from the
22 governmental gross receipts tax are receipts from transactions
23 involving tangible personal property or services on which
24 receipts or transactions the gross receipts tax, compensating
25 tax, motor vehicle excise tax, gasoline tax, ~~[special fuel tax]~~

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1 special fuel excise tax, oil and gas emergency school tax,
2 resources tax, processors tax, service tax or the excise tax
3 imposed under Section 66-12-6.1 NMSA 1978 is imposed. "

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